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No. 99-1859

IN THE

Supreme Court of the United States

ALMA ROMERO,

Petitioner,

v.

JOSEPH LOPEZ and THE CITY OF SAN DIEGO,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

On December 3, 1996, at approximately 2:30 p.m., San Diego Police Officer Joseph Lopez, a twenty-one year veteran at the time, noticed Petitioner Alma Romero's car illegally parked in a red zone near 900 Broadway Circle in the City of San Diego. Petitioner was loading luggage into her car when Officer Lopez pulled alongside Petitioner's car on his marked patrol motorcycle and informed Petitioner that it was a violation of the law to park in the red zone. Instead of moving her car, Plaintiff angrily approached Officer Lopez and exclaimed, "I'm tired, I've come a long way and I don't have time for this!" Officer Lopez concluded, based on Petitioner's verbal response and physical reactions, that she was not going to move her car.

Officer Lopez decided to issue a parking citation. He parked his motorcycle in front of Petitioner's car and retrieved his citation book from his saddlebag. He started to look at Petitioner's car in order to record the information needed for the citation. At that time, Officer Lopez had not instructed Petitioner, by words or gestures, that she was being detained. Petitioner was free to leave, but her car was not. Officer Lopez was unable to record any information about the car before his attention was drawn back to Petitioner.

Petitioner had slammed her trunk closed and walked back to the driver's door. Officer Lopez told Petitioner not to move the car. Petitioner responded by saying, "I'm leaving." Petitioner then entered her car and slid into the driver's seat. Officer Lopez again told Petitioner that she could not move the car. Plaintiff ignored Officer Lopez's orders and began to move the car in reverse. Officer Lopez tapped on the hood as Petitioner started to back away. Officer Lopez caught up

to the driver side of the car and tapped on the window, telling Petitioner to stop the car. Petitioner did not stop her car until she was forced to do so by the presence of a vehicle which had come to a stop directly behind her. Officer Lopez told Petitioner to turn off the ignition and get out of the car. Petitioner said, "No!" and motioned for the driver of the car behind her to move out of her way, telling him, "Move!" Officer Lopez then opened the driver's door, turned off the ignition switch, and arrested Petitioner.

Petitioner's questions being presented for review stem from the Ninth Circuit Court of Appeals' affirmation of the district court's rulings on a motion for summary judgment and a motion for judgment as a matter of law. Both of these motions relate to Petitioner's contention that she had a constitutional right to move her car despite Officer Lopez's instructions that the car remain at the scene for the few moments needed to obtain the information necessary for a parking citation, and that she was constitutionally protected from criminal prosecution for moving her car during those moments. The Ninth Circuit rejected these contentions, stating:

> The success of this argument depends on whether she had the right to flee the scene with her vehicle under California Vehicle Code § 40202. She has failed to establish such a "right." Section 40202 is silent on whether a driver has the right to take a vehicle while an officer is attempting to issue a citation involving it, and Romero offers no other authority authorizing the removal of a vehicle in this circumstance.

Pet., App. at A-5.

Thus, the Ninth Circuit rejected Petitioner's contention that the Fourth Amendment prohibited Officer Lopez's detention of Petitioner's car. That court also rejected Petitioner's contention that the Fourth Amendment precluded Officer Lopez from arresting Petitioner for moving her car while he was attempting to prepare the parking citation. Petitioner now seeks this Court's review of the Ninth Circuit's rejections of her contentions.

REASONS FOR DENYING THE WRIT

I. STANDARD OF REVIEW

This Court issues a writ of certiorari only for "compelling reasons." Rules of the Supreme Court of the United States, Rule 10(a). In evaluating a petition for certiorari, this Court considers whether

> a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals . . . or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

Rule 10(a)(1).

In this case, Petitioner asks this Court to review the Ninth Circuit Court of Appeal's affirmation of a district court's denial of Petitioner's motion for summary judgment and motion for judgment as a matter of law. Petitioner has, however, failed to show that there is a "compelling reason" for this Court to review the case. She has failed to show that

the denial of Petitioner's motions conflicted with other courts of appeal's decisions, or that the denial of Petitioner's motions "so far departed from the accepted and usual course of judicial proceedings" that a writ of certiorari is warranted. Absent such a showing, Petitioner's petition for writ of certiorari must be denied.

II. THERE IS NO COMPELLING REASONS FOR THIS COURT TO REVIEW THIS CASE

This Court grants review on certiorari only for "compelling reasons." Rules of the Supreme Court of the United States, Rule 10. Absent any compelling reasons, the holdings of the court below are not subject to review.

A. The Decision Of The Ninth Circuit Court Of Appeals Does Not Conflict With The Decisions of Any Other Courts

Petitioner contends that the Ninth Circuit Court of Appeals, in affirming the district court's rulings, "has decided an important federal question in a way that conflicts with relevant decisions of this Court." Pet. at 2. Petitioner, however, fails to identify any conflicts. She fails to identify any decisions which: (a) hold as unconstitutional a police officer's instruction that a vehicle momentarily remain in place while identifying information is obtained for the issuance of a parking citation; or (b) hold that a person is immune from criminal prosecution when refusing to comply with a police officer's instructions that a vehicle not be moved when such identifying information is sought.

Plaintiff contends that the Fourth Amendment prohibits the detention of an automobile by a police officer for the purpose of gathering information necessary to issue a parking citation. In support of this contention, Petitioner's cites numerous authorities in her Petition for Writ of Certiorari, but each authority cited for this contention deals solely with the detention or arrest of individuals. Petitioner fails to provide any authority which suggests that the law stated in these cases may be properly analogized to a situation involving the brief detention of personal property which is the subject of the exercise of a police officer's duty. Instead, Petitioner's authorities only address situations where law enforcement officers made traffic stops, detaining individuals who happened to be in vehicles, or otherwise involving invasive searches inside such vehicles.

The facts of the subject case are clearly distinguishable from the facts of the cases cited by Petitioner. Petitioner was not inside her vehicle, and the vehicle was not moving, when Officer Lopez decided to cite it. Her vehicle was never searched. Further, until her arrest for the violation of Penal Code section 148, Petitioner herself was free to leave the scene of the incident. While there are instances where the detention of a vehicle does rise to the level of a detention of the occupants of the vehicle, here there were no occupants of the vehicle when Officer Lopez began the process of writing the parking citation. Officer Lopez needn't have developed probable cause or reasonable suspicion with regard to Petitioner when he detained the vehicle. Petitioner was not part of the detention. She was not detained or arrested until she interfered with Officer Lopez's attempts to carry out his duties. Because Petitioner's authorities do not address the facts particular to this matter, Petitioner has failed to meet her burden of showing a conflict with other court

decisions. Because no conflicts have been identified, Petitioner may not rely on conflicting court decisions as an element making this case appropriate for review.

B. The Ninth Circuit Did Not Depart from the "Accepted and Usual Course of Judicial Proceedings" by Affirming the Lower Court Judgment

When considering a case for review, the Court considers whether the court of appeals departed from the "accepted and usual course of judicial proceedings" or sanctioned such a departure by the lower court. Rules of the Supreme Court of the United States, Rule 10(a).

Petitioner contends that she had a right to flee the scene with her vehicle. She did not, however, provide the district court with any authority for such a contention. She also failed to provide the Ninth Circuit with such authority. This Court has long held that persons asserting Fourth Amendment violations have the burden of establishing that such rights have been violated. *Rakas v. Illinois*, 439 U.S. 128 (1978). Thus, Petitioner had the burden of proving that the detention of her car was illegal. Because Petitioner never established the illegality of the claimed violation, the Ninth Circuit had no legal basis for recognizing the detention of Petitioner's car as a violation of Petitioner's rights. In refusing to grant Petitioner the relief she sought, the Ninth Circuit was, in fact, consistent with "the accepted and usual course of judicial proceedings." It would have departed from such course only if it had granted Petitioner's appeal in the light of her failure to establish legal grounds for her contentions. Petitioner has not met her burden of showing that the Ninth Circuit deviated from the "accepted and usual course of judicial proceedings" and as such, she may not use such a contention as a compelling reason for granting review.

III. NONE OF THE CASE LAW CITED BY PETITIONER SUPPORTS THE ISSUANCE OF THE WRIT OF CERTIORARI

As Petitioner has acknowledged, the key issue before this court is whether a person has the right to flee with his or her vehicle when a police officer is in the process of citing that vehicle for a parking violation and that officer instructs the driver to refrain from moving the vehicle while information for the citation is being gathered. Plaintiff has failed to establish that such a right exists, a fact clearly identified by the Ninth Circuit when affirming the district court's decisions. Petitioner continues to contend that such a right exists, but also continues to fail to identify any authority supporting this contention. As stated above, the cases cited by Petitioner are distinguishable from the subject case in that they do not address the core question of whether an officer may detain a vehicle to obtain identifying information. The cases cited by Petitioner only address situations where individuals were detained or arrested, where invasive searches were conducted. In contrast to the facts contained within Petitioner's cited cases, Officer Lopez did not initiate contact by pulling Petitioner over and searching her person or vehicle. Rather, Officer Lopez personally witnessed a parked vehicle violating local parking regulations and sought to issue a citation on the vehicle only after Petitioner made it clear that the violation would continue. Until Petitioner attempted to drive away, she was not "stopped." By then, of course, she was "stopped" not for the parking violation, but instead for her violation of California Penal Code section 148.

There is no true implication of Fourth Amendment rights in this matter because the governmental interest (penalizing individuals who break parking laws) served by a brief detention of the vehicle clearly outweighs Petitioner's interest in allowing lawbreakers absolute freedom to escape punishment for illegal parking. No constitutional rights are implicated by a minimal intrusion which has a limited objective, a legitimate purpose, and takes place under exigent circumstances, particularly when there is no other practical way to accomplish the objective. "Although the underlying command of the Fourth Amendment is always that searches and seizures be reasonable, what is reasonable depends on the context within which a search takes place." *New Jersey v. T.L.O.*, 469 U.S. 325, 337 (1985). While the subject incident certainly did not result in a search of Petitioner's car, and only possibly rose to what could arguably be considered a seizure, the context of the detention was such that Officer Lopez needed the car to remain in place for the few moments necessary for him to write down identifying information. In that context, his actions were reasonable, and were clearly justified by his duty to enforce violations of the law, particularly those he witnessed with his own eyes. "On one side of the balance are arrayed the individual's legitimate expectations of privacy and personal security; on the other, the government's need for effective methods to deal with breaches of public order." *Id.* Petitioner breached the public order by parking her car in a red zone and refusing to move it when instructed to do so by Officer Lopez. The officer's "effective method" of dealing with the breach was to prevent the car from leaving the scene for the minimal time it took to gather the information necessary to issue a citation.

In balancing the Fourth Amendment privacy protections against official intrusions, this Court stated, "it is ordinarily justifiable for the community to demand that the individual give up some part of his interest in privacy and security to advance the community's vital interests in law enforcement." *Winston v. Lee*, 470 U.S. 753, 759 (1985). Minimal intrusions, "reasonably related in scope to the justification for their initiation" especially in absence of practical alternatives, may certainly be legitimately performed without violating of Fourth Amendment rights. *United States v. Brignoni-Ponce*, 422 U.S. 873, 881 (1975).

Officer Lopez's brief detention of Petitioner's vehicle certainly did not rise to the level of the searches and seizures which are the subject of the cases cited by Petitioner. One can hardly imagine a less intrusive detention. As such, Petitioner's cited authorities are distinguishable from the facts particular to this case and thus have no bearing on whether this case is appropriate for review.

Petitioner also contends that the Fourth Amendment operates as a restriction on police officers detaining illegally parked vehicles unless basis for the detention is derived from California Vehicle Code section 22651. Pet. at 13. Petitioner, however, fails to provide any case law which suggests that this code section is applicable to the subject case. Section 22651 grants to police officers the power to *remove* a vehicle under certain specified circumstances. Pet., App. at A-37. While there are indeed a number of circumstances where an officer may remove an illegally parked vehicle from where it is situated, none of them are relevant to this case because Officer Lopez never *removed* Petitioner's car. He never made any attempt to have it towed, impounded, or otherwise removed from the illegal parking space. Petitioner fails to

provide any authority which suggests that Officer Lopez's instructions to Petitioner to *not* move the vehicle from the illegal parking space while he issued the citation rises to the level of a "removal." At most, Officer Lopez simply sought to detain the vehicle briefly for the sole purpose of preparing the parking citation.

IV. THE EXISTENCE OF MATERIAL FACTS IN DISPUTE PRECLUDE JUDGMENT IN FAVOR OF PETITIONER

Petitioner contends that there are sufficient undisputed material facts to support summary judgment in her favor. The district court found otherwise, and the Ninth Circuit correctly affirmed the district court's ruling. Petitioner nevertheless continues on the same path, though with no stronger authority.

Petitioner has listed as an undisputed fact, "[t]he information Respondent Lopez was required to obtain by the Municipal/Vehicle Codes was visible, i.e., not obstructed from view." Pet. at 8. Respondents conceded, and still do, that this is indeed an undisputed fact. The license plate number, the last four digits of the vehicle identification number, and the registration expiration date, all were visible to Officer Lopez, *but only prior to Petitioner's attempts to drive the car away*. Petitioner refuses to acknowledge that when she started driving the vehicle away from the scene, she was removing all of those pieces of information from the officer's view. So, while it is true that the information was visible at one time, the officer's duty became impossible to perform once the car was moved and the information disappeared from sight. Because Petitioner purposefully interfered with Officer Lopez in the performance of his duty,

her arrest for violating Penal Code section 148 was appropriate, and the denial of her motion for summary judgment was correctly affirmed by the Ninth Circuit.

In a similar vein, Petitioner also contends that Officer Lopez could not lawfully direct her to not move the car. Pet. at 18. This contention is based, at least in part, on Petitioner's reliance on Respondents' concession that the information Officer Lopez was required to obtain to write the parking citation was visible, i.e., not obstructed from view. Respondents do concede that the information was visible, but again, *only while the car was stationary.* Officer Lopez had to detain the car or otherwise lose the opportunity to perform his duty of issuing a citation. Petitioner fails to acknowledge that by moving the car, Petitioner was in fact removing the car from the officer's view. If Petitioner had been allowed to drive the vehicle away, Officer Lopez would have had no practical opportunity to obtain the last four digits of the car's vehicle identification number or the license plate number, and thus would have been unable to identify the vehicle for parking citation purposes. To suggest that the officer could have completed his inspection of the car and obtained the necessary identifying information while Petitioner was driving away is ludicrous. Petitioner's contentions can only lead to the illogical conclusion that Officer Lopez chasing Petitioner's fleeing vehicle though crowded streets to get her license plate number is preferable to the minimally invasive act of detaining the vehicle for a momentary external inspection. The Ninth Circuit rejected that illogical conclusion and there is no compelling reason for this Court to review that decision.

CONCLUSION

The Ninth Circuit acted properly by affirming the district court's denial of Petitioner's summary judgment motion and motion for judgment as a matter of law. Petitioner offers no convincing arguments or applicable case law which suggests that the Ninth Circuit erred in any respect. Thus, this case raises no significant issue warranting this Court's review. For all of the reasons set forth above, Respondents respectfully request that this Honorable Court deny the Petition.

Respectfully submitted,

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